

AGREEMENT
BETWEEN THE DEPARTMENT OF THE ARMY
AND
THE CITY OF SANTA FE AND SANTA FE COUNTY
FOR THE SANTA FE RIVER, NEW MEXICO, WATERSHED STUDY

THIS AGREEMENT is entered into this 25 day, of July, 2007, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the City of Santa Fe and Santa Fe County (hereinafter the "Sponsors"),

WITNESSETH, that

WHEREAS, the Congress (Senate and/or House Committees) has authorized the Corps of Engineers to conduct a study of the Rio Grande and tributaries, New Mexico pursuant to Public Law No. 228, 77th Congress, 1st Session, H.R. 4911, dated 18 August 1941, which reads in part:

"Sec. 4. The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys for flood control, to be made under the direction of the Chief of Engineers, in drainage areas of the United States and its Territorial possessions, which include the following-named localities:

Rio Grande and tributaries, New Mexico

Additional authority is granted by House Resolution dated 11 April 1974, which reads as follows:

"RESOLVED BY THE COMMITTEE ON PUBLIC WORKS OF THE HOUSE OF REPRESENTATIVES, UNITED STATES, That the Board of Engineers for Rivers and Harbors is hereby requested to review the report of the Chief of Engineers on the Rio Grande and tributaries, New Mexico, published in House Document Numbered 243, Eighty-first Congress, First Session, with a view to determining whether any modifications of the recommendations contained wherein are advisable at the present time, with particular reference to providing a plan for development, utilization and conservation of water and related land resources of "the metropolitan region of the Rio Grande from Cochiti Lake to Elephant Butte Reservoir, with due consideration for the metropolitan planning activities in the six-county area, consisting of Santa Fe, Sandoval, Bernalillo, Valencia, Socorro and Sierra Counties." Such studies to include appropriate consideration of the needs for protection against floods with particular emphasis on the levee system of the Middle Rio Grande Conservancy District, wise use of flood-plain lands, regional water supply and waste management facilities system, general recreation facilities, enhancement and control of water quality, enhancement and conservation of fish and wildlife and other measures for environmental enhancement, economic and human resources development, and shall be harmonious components of comprehensive development plans formulated by various planning agencies and other interested Federal agencies;

and

WHEREAS, the U.S. Army Corps of Engineers has conducted a reconnaissance study of the Santa Fe River watershed, New Mexico, pursuant to this authority, and has determined that further study in the nature of a "Feasibility Phase Study" (hereinafter the "Study") is required to fulfill the intent of the study authority and to assess the extent of the Federal interest in

participating in a solution to the identified problem; and

WHEREAS, Section 105 of the Water Resources Development Act of 1986 (Public Law 99-662, as amended) specifies the cost sharing requirements applicable to the Study;

WHEREAS, the Sponsors have the authority and capability to furnish the cooperation hereinafter set forth and are willing to participate in study cost sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, the Sponsors and the Government understand that entering into this Agreement in no way obligates either party to implement a project and that whether the Government supports a project authorization and budgets it for implementation depends upon, among other things, the outcome of the Study and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

- A. The term "Study Costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsors, and all negotiated costs of work performed by the Sponsors pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.
- B. The term "estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.
- C. The term "excess Study Costs" shall mean Study Costs that exceed the estimated Study Costs and that do not result from mutual agreement of the parties, a change in Federal law that increases the cost of the Study, or a change in the scope of the Study requested by the Sponsors.
- D. The term "study period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers Albuquerque District of initial Federal feasibility funds following the execution of this Agreement and ending when the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with the policies and programs of the President.
- E. The term "PMP" shall mean the Project Management Plan, which is attached to this Agreement and which shall not be considered binding on either party and is subject to change by the Government, in consultation with the Sponsors.
- F. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the

Sponsors in accordance with the PMP.

G. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, using funds and in-kind services provided by the Sponsors and funds appropriated by the Congress of the United States, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Article III.A., III.B. and III.C. of this Agreement, the Sponsors shall contribute cash and in-kind services equal to fifty (50) percent of Study Costs other than excess Study Costs. The Sponsors may, consistent with applicable law and regulations, contribute up to 50 percent of Study Costs through the provision of in-kind services. The in-kind services to be provided by the Sponsors, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the PMP. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsors shall pay a fifty (50) percent share of excess Study Costs in accordance with Article III.D. of this Agreement.

D. The Sponsors understand that the schedule of work may require the Sponsors to provide cash or in-kind services at a rate that may result in the Sponsors temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B. of this Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of this Article or the obligations concerning payment specified in Article III of this Agreement.

E. If, upon the award of any contract or the performance of any in-house work for the Study by the Government or the Sponsors, cumulative financial obligations of the Government and the Sponsors would result in excess Study Costs, the Government and the Sponsors agree to defer award of that and all subsequent contracts, and performance of that and all subsequent in-house work, for the Study until the Government and the Sponsors agree to proceed. Should the Government and the Sponsors require time to arrive at a decision, the Agreement will be suspended in accordance with Article X., for a period of not to exceed six months. In the event the Government and the Sponsors have not reached an agreement to proceed by the end of their 6 month period, the Agreement may be subject to termination in accordance with Article X.

F. No Federal funds may be used to meet the Sponsors' share of Study Costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

G. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsors with a third party in

furtherance of this Agreement which obligates funds of the Sponsors and does not obligate Federal appropriations shall be exclusively within the control of the Sponsors, but shall be subject to applicable Federal laws and regulations.

ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs, and current projections of the amount of Study Costs that will result in excess Study Costs. At least quarterly, the Government shall provide the Sponsors a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$1,100,000 and the Sponsors' share of estimated Study Costs is \$550,000. In order to meet the Sponsors' cash payment requirements for its share of estimated Study Costs, the Sponsors must provide a cash contribution currently estimated to be \$199,250. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the study described in the PMP, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsors.

B. The Sponsors shall provide their cash contribution required under Article II.B. of this Agreement in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Sponsors by July 31 of each year of the estimated funds that will be required from the Sponsors to meet the Sponsors' share of Study Costs for the upcoming fiscal year.

2. No later than 30 calendar days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsors in writing of the funds the Government determines to be required from the Sponsors to meet their required share of Study Costs for the first fiscal year of the Study. No later than 15 calendar days thereafter, the Sponsors shall provide the Government the full amount of the required funds by delivering a check payable to "FAO, USAED, Albuquerque District" to the District Engineer.

3. For the second and subsequent fiscal years of the Study, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Sponsors in writing of the funds the Government determines to be required from the Sponsors to meet their required share of Study Costs for that fiscal year, taking into account any temporary divergences identified under Article II.D of this Agreement. No later than 30 calendar days prior to the beginning of the fiscal year, the Sponsors shall make the full amount of the required funds available to the Government through the funding mechanism specified in paragraph B.2. of this Article.

4. The Government shall draw from the funds provided by the Sponsors such sums as the Government deems necessary to cover the Sponsors' share of contractual and in-house fiscal obligations attributable to the Study as they are incurred.

5. In the event the Government determines that the Sponsors must provide additional funds to meet their share of Study Costs, the Government shall so notify the Sponsors in writing. No later than sixty (60) calendar days after receipt of such notice, the Sponsors shall make the

full amount of the additional required funds available through the funding mechanism specified in paragraph B.2. of this Article.

C. Within ninety (90) days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsors, the amount of any excess Study Costs, and credits for the negotiated costs of the Sponsors, and shall furnish the Sponsors with the results of this accounting. Within thirty (30) days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsors for the excess, if any, of cash contributions and credits given over their required share of Study Costs, other than excess Study Costs, or the Sponsors shall provide the Government any cash contributions required for the Sponsors to meet their required share of Study Costs other than excess Study Costs.

D. The Sponsors shall provide their cash contribution for excess Study Costs as required under Article II.C. of this Agreement by delivering a check payable to "FAO, USAED, Albuquerque District" to the District Engineer as follows:

1. After the project that is the subject of this Study has been authorized for construction, no later than the date on which a Project Cooperation Agreement is entered into for the project; or

2. In the event the project that is the subject of this Study is not authorized for construction by a date that is no later than 5 years of the date of the final report of the Chief of Engineers concerning the project, or by a date that is no later than 2 years after the date of the termination of the study, the Sponsors shall pay their share of excess costs on that date (5 years after the date of the Chief of Engineers or 2 year after the date of the termination of the study).

ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

A. To provide for consistent and effective communication, the Sponsors and the Government shall appoint named senior representatives to an Executive Committee. Thereafter, the Executive Committee shall meet regularly until the end of the Study Period.

B. Until the end of the Study Period, the Executive Committee shall generally oversee the Study consistently with the PMP.

C. The Executive Committee may make recommendations that it deems warranted to the District Engineer on matters that it oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider such recommendations. The Government has the discretion to accept, reject, or modify the Executive Committee's recommendations.

D. The Executive Committee shall appoint representatives to serve on a Study Management Team. The Study Management Team shall keep the Executive Committee informed of the progress of the Study and of significant pending issues and actions, and shall prepare periodic reports on the progress of all work items identified in the PMP.

E. The costs of participation in the Executive Committee (including the cost to serve on the Study Management Team) shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE V - DISPUTES

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - MAINTENANCE OF RECORDS

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsors shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Study Costs. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments at 32 C.F.R. Section 33.20. The Government and the Sponsors shall maintain such books, records, documents, and other evidence in accordance with these procedures for a minimum of three years after completion of the Study and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsors shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsors are required to conduct under the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in total Study Costs and shared in accordance with the provisions of this Agreement.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsors act in independent capacities in the performance of their respective rights and obligations under this Agreement, and none are to be considered the officer, agent, or employee of the other.

ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsors' rights and obligations under this Agreement, the Sponsors agree to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE X - TERMINATION OR SUSPENSION

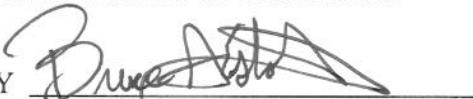
A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Sponsors shall have any further obligations hereunder, except as provided in Article III.C.; provided, that prior to such time and upon thirty (30) days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon any failure of the parties to agree to extend the study under Article II.E. of this agreement, or upon the failure of the Sponsors to fulfill their obligation under Article III. of this Agreement. In the event that any party elects to terminate this Agreement, all parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. and III.D. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to all parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, Albuquerque District.

DEPARTMENT OF THE ARMY

BY



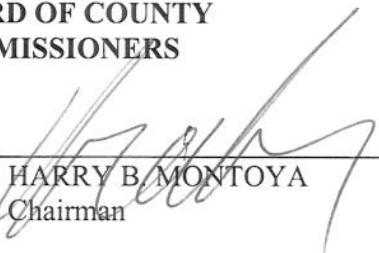
LTC TQDD WANG
Lieutenant Colonel, U.S. Army
District Engineer
Albuquerque District

DATE

5 AUG 06

**SANTA FE COUNTY
BOARD OF COUNTY
COMMISSIONERS**

BY


HARRY B. MONTOYA
Chairman

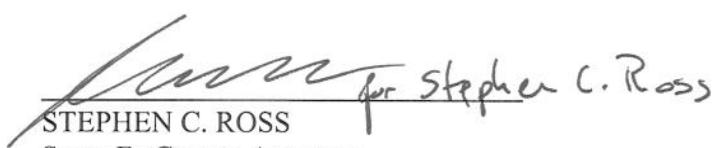
DATE

7/25/06

ATTEST:

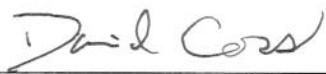

VALERIE ESPINOZA
Santa Fe County Clerk

APPROVED AS TO FORM:


STEPHEN C. ROSS
Santa Fe County Attorney

CITY OF SANTA FE

BY

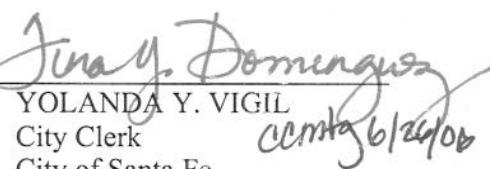


DAVID COSS
Mayor
City of Santa Fe

DATE

8-1-06

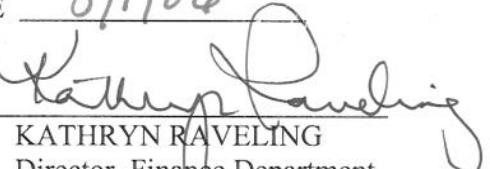
BY


YOLANDA Y. VIGIL
Svr. City Clerk
City of Santa Fe
ccmtg 6/26/06

DATE

8/1/06

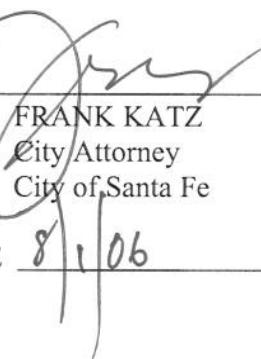
BY


KATHRYN RAVELING
Director, Finance Department
City of Santa Fe

DATE

8/1/06

BY


FRANK KATZ
City Attorney
City of Santa Fe

DATE

8/1/06



DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE NM 87109-3435

CESPA-DE (600)

19 July 2006

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: ASSUMPTION OF COMMAND

By authority of AR 600-20, paragraph 1-5a, the undersigned assumes command of the U.S. Army Engineer District, Albuquerque, Albuquerque, New Mexico, effective 19 July 2006.

B.A. ESTOK
LTC, EN
Commanding

DISTRIBUTION:

ALLDO
CESPD
CESPL
CESPK
CESPN

CERTIFICATION OF LEGAL REVIEW

As District Counsel, I have reviewed the Feasibility Cost Sharing Agreement (FCSA) with the City of Santa Fe and Santa Fe County for the Santa Fe River Watershed Study. Based on my review, I have determined that the FCSA is legally sufficient and is consistent with the model agreement for this authority.


Darrell R. Riekenberg 28 Jun 06
District Counsel
Albuquerque District

CERTIFICATION REGARDING LOBBYING

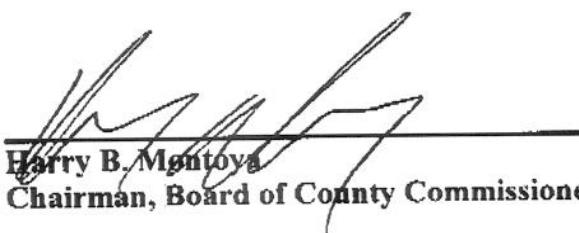
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Harry B. Montoya
Chairman, Board of County Commissioners

DATE: 24 October 2006

Approved as to form
Santa Fe County Attorney
By: Lawrence C. Ross
Date: 10-25-06

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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ASENATH KEPLER
CITY MANAGER

DATE:

8/28/06